

1 ROBERT A. SIEGEL (S.B. #64604)
rsiegel@omm.com
2 O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
3 Los Angeles, CA 90071-2899
Telephone: 213-430-6000
4 Facsimile: 213-430-6407

5 ADAM P. KOHSWEENEY (S.B. #229983)
akohsweeney@omm.com
6 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
7 San Francisco, CA 94111-3823
Telephone: 415-984-8912
8 Facsimile: 415-984-8701

9 Attorneys for Defendant
US Airways, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

14 JOSEPH TIMBANG ANGELES,
15 NOE LASTIMOSA, on behalf of
themselves and on behalf of others
similarly situated, and the general public,

16 Plaintiffs,

17 v.

18 US AIRWAYS, INC., and DOES 1
19 through 50,

20 Defendants.

Case No. 3:12-cv-05860 CRB

**DEFENDANT US AIRWAYS, INC.'S
ANSWER TO PLAINTIFFS' THIRD
AMENDED COMPLAINT**

Action Filed: June 22, 2012

Hon. Charles R. Breyer

1 Defendant US Airways, Inc. (“US Airways”), for itself alone and for no other defendant,
2 answers the unverified Third Amended Complaint (“TAC”) of Plaintiffs Joseph Timbang Angeles
3 (“Plaintiff Angeles”) and Noe Lastimosa (“Plaintiff Lastimosa”) (collectively “Plaintiffs”) as
4 follows:

5 **INTRODUCTION**

6 1. The allegations contained in Paragraph 1 of the TAC state legal conclusions, to
7 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
8 Airways denies each and every averment in Paragraph 1.

9 2. The allegations contained in Paragraph 2 of the TAC state legal conclusions, to
10 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
11 Airways denies each and every averment in Paragraph 2 except as follows: US Airways admits
12 that Plaintiffs purport to challenge alleged “systematic illegal employment practices.”

13 3. US Airways denies each and every averment contained in Paragraph 3 of the TAC.

14 4. US Airways denies each and every averment contained in Paragraph 4 of the TAC.

15 5. US Airways denies each and every averment contained in Paragraph 5 of the TAC.

16 **JURISDICTION AND VENUE**

17 6. The allegations contained in Paragraph 6 of the TAC state legal conclusions, to
18 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
19 Airways admits the averments in Paragraph 6.

20 7. The allegations contained in Paragraph 7 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 7, except as follows: US Airways admits
23 that venue is proper under 28 U.S.C. § 1391 and that Plaintiffs worked for US Airways at San
24 Francisco International Airport.

25 **PARTIES**

26 8. US Airways denies each and every averment contained in Paragraph 8 of the TAC,
27 except as follows: US Airways admits that plaintiff Angeles was employed as a part-time Fleet
28 Service Agent at San Francisco International Airport by US Airways, Inc. from May 27, 2008

1 through June 4, 2012.

2 9. US Airways denies each and every averment contained in Paragraph 9 of the TAC,
3 except as follows: US Airways admits that Plaintiff Lastimosa was employed as a full-time fleet
4 service agent and later as a part-time Fleet Service Agent by US Airways, Inc., admits that
5 Plaintiff Lastimosa's employment lasted from 2007 to on or about June 2012, when Plaintiff
6 Lastimosa was laid off, and admits that Plaintiff Lastimosa was offered to return as a part-time
7 employee in December 2012 but declined.

8 10. The allegations contained in Paragraph 10 of the TAC state legal conclusions, to
9 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
10 Airways denies each and every averment in Paragraph 10, except as follows: US Airways admits
11 that it "is a corporation doing business in the State of California" and that it is "a corporation
12 incorporated under the laws of the State of Delaware."

13 11. The allegations contained in Paragraph 11 of the TAC state legal conclusions, to
14 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
15 Airways denies each and every averment in Paragraph 11.

16 12. The allegations contained in Paragraph 12 of the TAC state legal conclusions, to
17 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
18 Airways denies each and every averment in Paragraph 12, except as follows: US Airways admits
19 that it employed Fleet Service Agents at San Francisco International Airport and avers that
20 "California Labor Code Sections 201-204, 510, 1194, 226, 2698, et seq., 2802, California
21 Business and Professions Code Section 17200, et seq. (Unfair Practices Act), and IWC Wage
22 Order No. 9" speak for themselves.

23 13. The allegations contained in Paragraph 13 of the TAC state legal conclusions, to
24 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
25 Airways denies each and every averment in Paragraph 13.

26 14. The allegations contained in Paragraph 14 of the TAC state legal conclusions, to
27 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
28 Airways denies each and every averment in Paragraph 14.

1 15. The allegations contained in Paragraph 15 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 15.

4 16. The allegations contained in Paragraph 16 of the TAC state legal conclusions, to
5 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
6 Airways denies each and every averment in Paragraph 16.

7 17. The allegations contained in Paragraph 17 of the TAC state legal conclusions, to
8 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
9 Airways denies each and every averment in Paragraph 17.

10 **STATEMENT OF FACTS**

11 18. US Airways denies each and every averment contained in Paragraph 18 of the
12 TAC, except as follows: US Airways admits that US Airways and/or US Airways Express
13 “operate[] flights and serve[] passengers in several airports in California, including” San
14 Francisco, San Jose, Oakland, Sacramento, Monterey, Fresno, Bakersfield, San Luis Obispo,
15 Santa Barbara, Santa Ana, Palm Springs, Los Angeles, and San Diego.

16 19. The allegations contained in Paragraph 19 of the TAC state legal conclusions, to
17 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
18 Airways denies each and every averment in Paragraph 19, except as follows: US Airways admits
19 that Fleet Service Agents are required to clock in at the beginning and clock out at the end of each
20 work shift.

21 20. US Airways denies each and every averment contained in Paragraph 20 of the
22 TAC, except as follows: US Airways avers that Fleet Service Agents currently are allowed both
23 to bid for schedules and to voluntarily shift trade, in conformance with Article 5, Section T of the
24 Fleet Service Agreement, dated May 8, 2008, entered into between US Airways and Fleet Service
25 Agents as represented by the International Association of Machinists and Aerospace Workers.

26 21. The allegations contained in Paragraph 21 of the TAC state legal conclusions, to
27 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
28 Airways denies each and every averment in Paragraph 21.

1 22. The allegations contained in Paragraph 22 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 22.

4 23. The allegations contained in Paragraph 23 of the TAC state legal conclusions, to
5 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
6 Airways denies each and every averment in Paragraph 23.

7 24. The allegations contained in Paragraph 24 of the TAC state legal conclusions, to
8 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
9 Airways denies each and every averment in Paragraph 24, except as follows: US Airways admits
10 that as a result of the operation of the voluntary shift trade policy governed by Article 5, Section
11 T of the Fleet Service Agreement, dated May 8, 2008, entered into between US Airways and Fleet
12 Service Agents as represented by the International Association of Machinists and Aerospace
13 Workers, it is possible that Fleet Service Agent might “work seven or more consecutive days.”

14 25. The allegations contained in Paragraph 25 of the TAC state legal conclusions, to
15 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
16 Airways denies each and every averment in Paragraph 25.

17 26. The allegations contained in Paragraph 26 of the TAC state legal conclusions, to
18 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
19 Airways denies each and every averment in Paragraph 26.

20 27. The allegations contained in Paragraph 27 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 27.

23 28. The allegations contained in Paragraph 28 of the TAC state legal conclusions, to
24 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
25 Airways denies each and every averment in Paragraph 28.

26 29. The allegations contained in Paragraph 29 of the TAC state legal conclusions, to
27 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
28 Airways denies each and every averment in Paragraph 29.

1 30. The allegations contained in Paragraph 30 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 30.

4 31. The allegations contained in Paragraph 31 of the TAC state legal conclusions, to
5 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
6 Airways denies each and every averment in Paragraph 31.

7 32. The allegations contained in Paragraph 32 of the TAC state legal conclusions, to
8 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
9 Airways denies each and every averment in Paragraph 32.

10 33. The allegations contained in Paragraph 33 of the TAC state legal conclusions, to
11 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
12 Airways denies each and every averment in Paragraph 33, except as follows: US Airways admits
13 that WorkBrain 5.0 uses “grace after exit” and “grace before start” which are unpaid codes and
14 avers that WorkBrain 5.0 also uses “grace worked” which compensates employees who perform
15 work during a grace period.

16 34. The allegations contained in Paragraph 34 of the TAC state legal conclusions, to
17 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
18 Airways denies each and every averment in Paragraph 34.

19 35. The allegations contained in Paragraph 35 of the TAC state legal conclusions, to
20 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
21 Airways denies each and every averment in Paragraph 35.

22 36. The allegations contained in Paragraph 36 of the TAC state legal conclusions, to
23 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
24 Airways denies each and every averment in Paragraph 36.

25 37. The allegations contained in Paragraph 37 of the TAC state legal conclusions, to
26 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
27 Airways denies each and every averment in Paragraph 37.

28 38. The allegations contained in Paragraph 38 of the TAC state legal conclusions, to

1 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
2 Airways denies each and every averment in Paragraph 38.

3 39. The allegations contained in Paragraph 39 of the TAC state legal conclusions, to
4 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
5 Airways denies each and every averment in Paragraph 39.

6 40. The allegations contained in Paragraph 40 of the TAC state legal conclusions, to
7 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
8 Airways denies each and every averment in Paragraph 40.

9 41. The allegations contained in Paragraph 41 of the TAC state legal conclusions, to
10 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
11 Airways denies each and every averment in Paragraph 41, except as follows: US Airways avers
12 that it is without sufficient information or knowledge to form a belief as to whether “The LWDA
13 has not provided notice that it does not intend to investigate the alleged violations.”

14 **CLASS ACTION ALLEGATIONS**

15 42. The allegations contained in Paragraph 42 of the TAC state legal conclusions, to
16 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
17 Airways denies each and every averment in Paragraph 42, except as follows: US Airways admits
18 that Plaintiffs purport to bring this action as a class action as described in Paragraph 42.

19 43. The allegations contained in Paragraph 43 of the TAC state legal conclusions, to
20 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
21 Airways denies each and every averment in Paragraph 43, except as follows: US Airways admits
22 that the purported class contains more than 100 persons and that the identity of purported class
23 members as defined in the TAC can be determined by a review of US Airways’ records.

24 44. The allegations contained in Paragraph 44 of the TAC state legal conclusions, to
25 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
26 Airways denies each and every averment in Paragraph 44, except as follows: US Airways alleges
27 that it is without sufficient information or knowledge to form a belief as to whether
28

1 “PLAINTIFFS’ counsels are competent and experienced in litigating wage and hour class
2 actions.”

3 45. The allegations contained in Paragraph 45 of the TAC state legal conclusions, to
4 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
5 Airways denies each and every averment in Paragraph 45.

6 46. The allegations contained in Paragraph 46 of the TAC state legal conclusions, to
7 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
8 Airways denies each and every averment in Paragraph 46.

9 47. The allegations contained in Paragraph 47 of the TAC state legal conclusions, to
10 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
11 Airways denies each and every averment in Paragraph 47.

12 48. The allegations contained in Paragraph 48 of the TAC state legal conclusions, to
13 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
14 Airways denies each and every averment in Paragraph 48.

15 49. The allegations contained in Paragraph 49 of the TAC state legal conclusions, to
16 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
17 Airways denies each and every averment in Paragraph 49.

18 a. The allegations contained in Paragraph 49(a) of the TAC state legal
19 conclusions, to which no responsive pleading is required, but to the extent
20 a responsive pleading is necessary, US Airways denies each and every
21 averment in Paragraph 49(a).

22 b. The allegations contained in Paragraph 49(b) of the TAC state legal
23 conclusions, to which no responsive pleading is required, but to the extent
24 a responsive pleading is necessary, US Airways denies each and every
25 averment in Paragraph 49(b).

26 c. The allegations contained in Paragraph 49(c) of the TAC state legal
27 conclusions, to which no responsive pleading is required, but to the extent
28

1 a responsive pleading is necessary, US Airways denies each and every
2 averment in Paragraph 49(c).

3 d. The allegations contained in Paragraph 49(d) of the TAC state legal
4 conclusions, to which no responsive pleading is required, but to the extent
5 a responsive pleading is necessary, US Airways denies each and every
6 averment in Paragraph 49(d).

7 e. The allegations contained in Paragraph 49(e) of the TAC state legal
8 conclusions, to which no responsive pleading is required, but to the extent
9 a responsive pleading is necessary, US Airways denies each and every
10 averment in Paragraph 49(e).

11 f. The allegations contained in Paragraph 49(f) of the TAC state legal
12 conclusions, to which no responsive pleading is required, but to the extent
13 a responsive pleading is necessary, US Airways denies each and every
14 averment in Paragraph 49(f).

15 g. The allegations contained in Paragraph 49(g) of the TAC state legal
16 conclusions, to which no responsive pleading is required, but to the extent
17 a responsive pleading is necessary, US Airways denies each and every
18 averment in Paragraph 49(g).

19 h. The allegations contained in Paragraph 49(h) of the TAC state legal
20 conclusions, to which no responsive pleading is required, but to the extent
21 a responsive pleading is necessary, US Airways denies each and every
22 averment in Paragraph 49(h).

23 i. The allegations contained in Paragraph 49(i) of the TAC state legal
24 conclusions, to which no responsive pleading is required, but to the extent
25 a responsive pleading is necessary, US Airways denies each and every
26 averment in Paragraph 49(i).

27 j. The allegations contained in Paragraph 49(j) of the TAC state legal
28 conclusions, to which no responsive pleading is required, but to the extent

1 a responsive pleading is necessary, US Airways denies each and every
2 averment in Paragraph 49(j).

3 k. The allegations contained in Paragraph 49(k) of the TAC state legal
4 conclusions, to which no responsive pleading is required, but to the extent
5 a responsive pleading is necessary, US Airways denies each and every
6 averment in Paragraph 49(k).

7 l. The allegations contained in Paragraph 49(l) of the TAC state legal
8 conclusions, to which no responsive pleading is required, but to the extent
9 a responsive pleading is necessary, US Airways denies each and every
10 averment in Paragraph 49(l).

11 m. The allegations contained in Paragraph 49(m) of the TAC state legal
12 conclusions, to which no responsive pleading is required, but to the extent
13 a responsive pleading is necessary, US Airways denies each and every
14 averment in Paragraph 49(m).

15 50. The allegations contained in Paragraph 50 of the TAC state legal conclusions, to
16 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
17 Airways denies each and every averment in Paragraph 50.

18 **FIRST CAUSE OF ACTION**

19 **OVERTIME COMPENSATION**

20 51. Answering Paragraph 51 of the TAC, US Airways repeats and incorporates herein
21 by reference each and all of the denials, admissions, and averments set forth above in its answers
22 to Paragraphs 1 through 50 of the TAC, as though fully set forth herein.

23 52. The allegations contained in Paragraph 52 of the TAC state legal conclusions, to
24 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
25 Airways denies each and every averment in Paragraph 52.

26 53. The allegations contained in Paragraph 53 of the TAC state legal conclusions, to
27 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
28 Airways denies each and every averment in Paragraph 53.

1 54. The allegations contained in Paragraph 54 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 54.

4 55. The allegations contained in Paragraph 55 of the TAC state legal conclusions, to
5 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
6 Airways denies each and every averment in Paragraph 55, except as follows: US Airways admits
7 that Plaintiffs purport to request relief on the stated basis.

8 **SECOND CAUSE OF ACTION**

9 **WAGES AND MINIMUM WAGE**

10 56. Answering Paragraph 56 of the TAC, US Airways repeats and incorporates herein
11 by reference each and all of the denials, admissions, and averments set forth above in its answers
12 to Paragraphs 1 through 55 of the TAC, as though fully set forth herein.

13 57. The allegations contained in Paragraph 57 of the TAC state legal conclusions, to
14 which no responsive pleading is required.

15 58. The allegations contained in Paragraph 58 of the TAC state legal conclusions, to
16 which no responsive pleading is required.

17 59. The allegations contained in Paragraph 59 of the TAC state legal conclusions, to
18 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
19 Airways denies each and every averment in Paragraph 59.

20 60. The allegations contained in Paragraph 60 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 60.

23 61. The allegations contained in Paragraph 61 of the TAC state legal conclusions, to
24 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
25 Airways denies each and every averment in Paragraph 61.

26 62. The allegations contained in Paragraph 62 of the TAC state legal conclusions, to
27 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
28

1 Airways denies each and every averment in Paragraph 62, except as follows: US Airways admits
2 that Plaintiffs purport to request relief on the stated basis.

3 **THIRD CAUSE OF ACTION**

4 **WAGE STATEMENTS**

5 63. Answering Paragraph 63 of the TAC, US Airways repeats and incorporates herein
6 by reference each and all of the denials, admissions, and averments set forth above in its answers
7 to Paragraphs 1 through 62 of the TAC, as though fully set forth herein.

8 64. The allegations contained in Paragraph 64 of the TAC state legal conclusions, to
9 which no responsive pleading is required.

10 65. The allegations contained in Paragraph 65 of the TAC state legal conclusions, to
11 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
12 Airways denies each and every averment in Paragraph 65.

13 66. The allegations contained in Paragraph 66 of the TAC state legal conclusions, to
14 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
15 Airways denies each and every averment in Paragraph 66, except as follows: US Airways admits
16 that Plaintiffs purport to request relief on the stated basis.

17 **FOURTH CAUSE OF ACTION**

18 **WORK RELATED EXPENSES**

19 67. Answering Paragraph 67 of the TAC, US Airways repeats and incorporates herein
20 by reference each and all of the denials, admissions, and averments set forth above in its answers
21 to Paragraphs 1 through 66 of the TAC, as though fully set forth herein.

22 68. The allegations contained in Paragraph 68 of the TAC state legal conclusions, to
23 which no responsive pleading is required.

24 69. The allegations contained in Paragraph 69 of the TAC state legal conclusions, to
25 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
26 Airways alleges that it is without sufficient information or knowledge to form a belief as to
27 whether "Plaintiffs, and similarly situated employees, used their cell phones at work to
28 communicate with management, supervisors and other employees," and avers that any such use

1 that did occur was a personal choice for the employee's own convenience and in violation of US
2 Airways policies.

3 70. The allegations contained in Paragraph 70 of the TAC state legal conclusions, to
4 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
5 Airways alleges that it is without sufficient information or knowledge to form a belief as to
6 whether "Plaintiffs, and similarly situated employees, incurred costs and expenses, from the usage
7 of their personal cell phones at work."

8 71. The allegations contained in Paragraph 71 of the TAC state legal conclusions, to
9 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
10 Airways denies each and every averment in Paragraph 71 and avers that it has a policy in place
11 for the reimbursement of business-related expenses.

12 72. The allegations contained in Paragraph 72 of the TAC state legal conclusions, to
13 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
14 Airways denies each and every averment in Paragraph 72.

15 73. The allegations contained in Paragraph 73 of the TAC state legal conclusions, to
16 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
17 Airways denies each and every averment in Paragraph 73, except as follows: US Airways admits
18 that Plaintiffs purport to request relief on the stated basis.

19 **FIFTH CAUSE OF ACTION**

20 **LABOR CODE §§ 201, 202, & 203**

21 74. Answering Paragraph 74 of the TAC, US Airways repeats and incorporates herein
22 by reference each and all of the denials, admissions, and averments set forth above in its answers
23 to Paragraphs 1 through 73 of the TAC, as though fully set forth herein.

24 75. The allegations contained in Paragraph 75 of the TAC state legal conclusions, to
25 which no responsive pleading is required.

26 76. The allegations contained in Paragraph 76 of the TAC state legal conclusions, to
27 which no responsive pleading is required.
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1 77. The allegations contained in Paragraph 77 of the TAC state legal conclusions, to
2 which no responsive pleading is required.

3 78. The allegations contained in Paragraph 78 of the TAC state legal conclusions, to
4 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
5 Airways denies each and every averment in Paragraph 78.

6 79. The allegations contained in Paragraph 79 of the TAC state legal conclusions, to
7 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
8 Airways denies each and every averment in Paragraph 79, except as follows: US Airways admits
9 that Plaintiffs purport to request relief on the stated basis.

10 **SIXTH CAUSE OF ACTION**

11 **BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

12 80. Answering Paragraph 80 of the TAC, US Airways repeats and incorporates herein
13 by reference each and all of the denials, admissions, and averments set forth above in its answers
14 to Paragraphs 1 through 79 of the TAC, as though fully set forth herein.

15 81. The allegations contained in Paragraph 81 of the TAC state legal conclusions, to
16 which no responsive pleading is required.

17 82. The allegations contained in Paragraph 82 of the TAC state legal conclusions, to
18 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
19 Airways avers that California Business & Professions Code § 17204 speaks for itself.

20 83. The allegations contained in Paragraph 83 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 83.

23 a. The allegations contained in Paragraph 83(a) of the TAC state legal
24 conclusions, to which no responsive pleading is required, but to the extent
25 a responsive pleading is necessary, US Airways denies each and every
26 averment in Paragraph 83(a).

27 b. The allegations contained in Paragraph 83(b) of the TAC state legal
28 conclusions, to which no responsive pleading is required, but to the extent

1 a responsive pleading is necessary, US Airways denies each and every
2 averment in Paragraph 83(b).

3 c. The allegations contained in Paragraph 83(c) of the TAC state legal
4 conclusions, to which no responsive pleading is required, but to the extent
5 a responsive pleading is necessary, US Airways denies each and every
6 averment in Paragraph 83(c).

7 d. The allegations contained in Paragraph 83(d) of the TAC state legal
8 conclusions, to which no responsive pleading is required, but to the extent
9 a responsive pleading is necessary, US Airways denies each and every
10 averment in Paragraph 83(d).

11 e. The allegations contained in Paragraph 83(e) of the TAC state legal
12 conclusions, to which no responsive pleading is required, but to the extent
13 a responsive pleading is necessary, US Airways denies each and every
14 averment in Paragraph 83(e).

15 84. The allegations contained in Paragraph 84 of the TAC state legal conclusions, to
16 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
17 Airways denies each and every averment in Paragraph 84.

18 85. The allegations contained in Paragraph 85 of the TAC state legal conclusions, to
19 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
20 Airways denies each and every averment in Paragraph 85.

21 86. The allegations contained in Paragraph 86 of the TAC state legal conclusions, to
22 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
23 Airways denies each and every averment in Paragraph 86.

24 87. The allegations contained in Paragraph 87 of the TAC state legal conclusions, to
25 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
26 Airways denies each and every averment in Paragraph 87.

1 88. The allegations contained in Paragraph 88 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 88.

4 89. The allegations contained in Paragraph 89 of the TAC state legal conclusions, to
5 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
6 Airways denies each and every averment in Paragraph 89.

7 90. The allegations contained in Paragraph 90 of the TAC state legal conclusions, to
8 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
9 Airways denies each and every averment in Paragraph 90 except as follows: US Airways admits
10 that Plaintiffs purport to request relief on this basis.

11 91. The allegations contained in Paragraph 91 of the TAC state legal conclusions, to
12 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
13 Airways denies each and every averment in Paragraph 91.

14 92. The allegations contained in Paragraph 92 of the TAC state legal conclusions, to
15 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
16 Airways denies each and every averment in Paragraph 92.

17 93. The allegations contained in Paragraph 93 of the TAC state legal conclusions, to
18 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
19 Airways denies each and every averment in Paragraph 93.

20 94. The allegations contained in Paragraph 94 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 94 except as follows: US Airways admits
23 that Plaintiffs purport to request relief on the stated basis.

24 95. The allegations contained in Paragraph 95 of the TAC state legal conclusions, to
25 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
26 Airways denies each and every averment in Paragraph 95 except as follows: US Airways admits
27 that Plaintiffs purport to request relief on the stated basis.
28

1 96. The allegations contained in Paragraph 96 of the TAC state legal conclusions, to
2 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
3 Airways denies each and every averment in Paragraph 96.

4 **SEVENTH CAUSE OF ACTION**

5 **LABOR CODE § 2699**

6 97. Answering Paragraph 97 of the TAC, US Airways repeats and incorporates herein
7 by reference each and all of the denials, admissions, and averments set forth above in its answers
8 to Paragraphs 1 through 96 of the TAC, as though fully set forth herein.

9 98. The allegations contained in Paragraph 98 of the TAC state legal conclusions, to
10 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
11 Airways denies each and every averment in Paragraph 98 and avers that California Labor Code §
12 2699 speaks for itself.

13 99. The allegations contained in Paragraph 99 of the TAC state legal conclusions, to
14 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
15 Airways denies each and every averment in Paragraph 99.

16 100. The allegations contained in Paragraph 100 of the TAC state legal conclusions, to
17 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
18 Airways denies each and every averment in Paragraph 100, except as follows: US Airways admits
19 that Plaintiff Angeles mailed Exhibit A to the LWDA.

20 101. The allegations contained in Paragraph 101 of the TAC state legal conclusions, to
21 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
22 Airways denies each and every averment in Paragraph 101 of the TAC, except as follows: US
23 Airways admits that Plaintiff Angeles mailed Exhibit A to the LWDA.

24 102. The allegations contained in Paragraph 102 of the TAC state legal conclusions, to
25 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
26 Airways denies each and every averment in Paragraph 102 of the TAC, except as follows: US
27 Airways alleges that it is without sufficient information or knowledge to form a belief as to
28

1 whether “[t]he LWDA has not provided notice that it does not intend to investigate the alleged
2 violations.”

3 103. The allegations contained in Paragraph 103 of the TAC state legal conclusions, to
4 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
5 Airways denies each and every averment in Paragraph 103 except as follows: US Airways admits
6 that Plaintiffs purport to request relief on the stated basis.

7 104. The allegations contained in Paragraph 104 of the TAC state legal conclusions, to
8 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
9 Airways denies each and every averment in Paragraph 104.

10 105. The allegations contained in Paragraph 105 of the TAC state legal conclusions, to
11 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
12 Airways denies each and every averment in Paragraph 105.

13 106. The allegations contained in Paragraph 106 of the TAC state legal conclusions, to
14 which no responsive pleading is required, but to the extent a responsive pleading is necessary, US
15 Airways denies each and every averment in Paragraph 106.

16 US Airways further denies each and every, all and singular, allegation and/or averment
17 contained in the TAC, except to the extent specifically admitted herein.

18 **PRAYER FOR RELIEF**

19 To the extent that any response is required to the TAC’s separately denominated Prayer
20 for Relief, US Airways denies each and every averment contained in the Prayer for Relief and
21 further denies that Plaintiffs or the alleged putative class were damaged in the sum alleged or
22 sums alleged or in any sum or at all.

23 **AS AND FOR ITS AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**

24 **PURPORTED TO BE SET FORTH AGAINST IT BY PLAINTIFFS ON BEHALF OF**

25 **THEMSELVES, AND ON BEHALF OF THE PUTATIVE MEMBERS OF EACH**

26 **PURPORTED CLASS AS SET FORTH IN THE THIRD AMENDED COMPLAINT, US**

27 **AIRWAYS ALLEGES AS FOLLOWS, SUBJECT TO US AIRWAYS’ RIGHT TO**

28

1 **AMEND AND ASSERT SUCH OTHER AFFIRMATIVE DEFENSES AS MAY BECOME**
2 **AVAILABLE DURING DISCOVERY IN THIS ACTION:**

3 **FIRST AFFIRMATIVE DEFENSE**

4 Failure to State a Cause of Action

5 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
6 members of each purported class as set forth in the Third Amended Complaint, or some of them,
7 fail to state facts sufficient to constitute a cause of action against US Airways.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Statute of Limitations

10 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
11 members of each purported class as set forth in the Third Amended Complaint, or some of them,
12 are barred in whole or in part by the applicable statutes of limitations, including without
13 limitation, the limitations periods prescribed in California Business and Professions Code §
14 17208, California Labor Code § 203, and California Civil Procedure Code §§ 338, 340, and/or
15 343.

16 **THIRD AFFIRMATIVE DEFENSE**

17 Dismissed Claims / Law of the Case

18 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
19 members of each purported class as set forth in the Third Amended Complaint, or some of them,
20 are barred in whole or in part pursuant to the Order Granting in Part and Denying in Part Motion
21 to Dismiss [Doc. No. 23], dated February 19, 2013, and/or the Order Granting Motion for Partial
22 Dismissal of Plaintiffs' Second Amended Complaint [Doc. No. 38], dated June 26, 2013.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Preemption

25 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
26 members of each purported class as set forth in the Third Amended Complaint, or some of them,
27 are barred in whole or in part because they are preempted by the Railway Labor Act, 29 U.S.C.
28 §§ 151 *et seq.* and/or the Airline Deregulation Act, 49 U.S.C. §§ 40120 *et seq.*

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **Lawful Exemptions**

3 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
4 members of each purported class as set forth in the Third Amended Complaint, or some of them,
5 are barred in whole or in part by California Labor Code §§ 514 and/or 515 and/or Industrial
6 Welfare Commission Orders No. 9-2001, §§ 1(E) and/or 3(N) and No. 9-90 §§ 1(D) and/or 3(J).

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **Failure to State a Cause of Action for Damages**

9 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
10 members of each purported class as set forth in the Third Amended Complaint, and each of them,
11 fail to state facts sufficient to constitute a cause of action against US Airways for compensatory
12 damages, actual or consequential damages, special or incidental damages, disgorgement or
13 restitution, statutory penalties, declaratory or injunctive relief, interest, or attorneys' fees and
14 costs.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **No "Willful" Violations ("Waiting Time Penalties")**

17 Neither Plaintiffs nor any putative class members are entitled to "waiting time" penalties
18 because any wages due at the time of separation from employment were paid consistent with
19 California Labor Code §§ 201 & 202 and/or because US Airways' behavior was not willful
20 within the meaning of California Labor Code § 203.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **No "Knowing and Intentional" Violations and No Injury**

23 Neither Plaintiffs nor any putative class members are entitled to penalties under California
24 Labor Code § 226 because US Airways' behavior was not "knowing and intentional" and/or
25 because no injury was suffered.

26 **NINTH AFFIRMATIVE DEFENSE**

27 **No Class/Representative Action**

28 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative

1 members of each purported class as set forth in the Third Amended Complaint, cannot and should
2 not be maintained on a class-action or representative action basis because: those claims, and each
3 of them, fail to meet the necessary requirements for class certification, including, *inter alia*, class
4 ascertainability, typicality, commonality, numerosity, manageability, superiority, and adequacy of
5 the class representative; lack of a community of interest among the putative class; and/or because
6 class certification is inappropriate due to US Airways' lawful policies, pursuant to *Wal-Mart*
7 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) and *Brinker Rest. Corp. v. Superior Court*
8 *(Hohnbaum)*, 53 Cal.4th 1004 (2012).

9 **TENTH AFFIRMATIVE DEFENSE**

10 **Unconstitutional Class/Representative Action**

11 Certification of a class action or representative action under the circumstances of this case
12 would violate US Airways' rights under the United States Constitution and the California
13 Constitution.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 **No Standing**

16 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
17 members of each purported class as set forth in the Third Amended Complaint, are barred in
18 whole or in part because Plaintiffs and the putative class members, or some of them, lack
19 standing. Further, Plaintiffs and the putative class members, or some of them, lack standing with
20 respect to their claims for injunctive relief because Plaintiffs and some of the putative class
21 members are former employees of US Airways.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **Attorneys' Fees**

24 US Airways is entitled to recover all costs and attorneys' fees incurred herein, pursuant to,
25 by way of example and not of limitation, California Labor Code Section § 218.5.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 **Conduct Reasonable And In Good Faith/Not Willful**

28 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative

1 members of each purported class as set forth in the Third Amended Complaint, or some of them,
2 are barred in whole or in part because US Airways has at all times acted in good faith, in
3 conformity with and in reliance on written administrative regulations, orders, rulings, guidelines,
4 approvals and/or interpretations of federal and California agencies, and on the basis of a good-
5 faith and reasonable belief that it had complied fully with California wage and hour laws.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 Waiver

8 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
9 members of each purported class as set forth in the Third Amended Complaint, or some of them,
10 are barred in whole or in part because such claims have been waived, discharged and/or
11 abandoned.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 Accord and Satisfaction, Payment

14 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
15 members of each purported class as set forth in the Third Amended Complaint, or some of them,
16 are barred in whole or in part by the principles of accord and satisfaction, and payment.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 Release

19 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
20 members of each purported class as set forth in the Third Amended Complaint, or some of them,
21 are barred in whole or in part because said claims have been released by the employee(s) in
22 question.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 Setoff and Recoupment

25 If any damages have been sustained by Plaintiffs, or by any putative members of any
26 purported class as set forth in the Third Amended Complaint, although such is not admitted
27 hereby or herein and is specifically denied, US Airways is entitled under the equitable doctrine of
28 setoff and recoupment to offset all obligations of the Plaintiffs or putative class members owed to

1 US Airways against any judgment that may be entered against US Airways

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

3 No Jury Trial

4 Plaintiffs are not entitled to have equitable issues or matters of law tried to a jury, and
5 Plaintiffs' demand for a jury trial should be so limited.

6 **NINETEENTH AFFIRMATIVE DEFENSE**

7 Restitution Only

8 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
9 members of each purported class as set forth in the Third Amended Complaint, or some of them,
10 are barred in whole or in part to the extent they seek to receive penalties or other non-
11 restitutionary awards pursuant to the California Business & Professions Code.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 Estoppel

14 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
15 members of each purported class as set forth in the Third Amended Complaint, or some of them,
16 are barred in whole or in part because Plaintiffs and the putative class members are estopped by
17 their own conduct to claim any right to damages or other monetary relief, or any additional
18 damages or other monetary relief, from US Airways.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 Unclean Hands

21 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
22 members of each purported class as set forth in the Third Amended Complaint, or some of them,
23 are barred in whole or in part by Plaintiffs' and the putative class members' unclean hands and/or
24 inequitable or wrongful conduct.

25 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

26 Laches

27 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
28 members of each purported class as set forth in the Third Amended Complaint, or some of them,

1 are barred in whole or in part by the doctrine of laches.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 **Due Process**

4 Any award under Plaintiffs' sixth and/or seventh causes of action, brought on behalf of
5 themselves and the putative members of each purported class and/or group of "aggrieved
6 employees" defined in the Third Amended Complaint, pursuant to the California Business &
7 Professions Code and/or the California Labor Code, would violate the Excessive Fines and Due
8 Process Clauses of the United States and California Constitutions.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 **Unjust, Arbitrary and Oppressive, or Confiscatory Penalties**

11 Plaintiffs, and the putative members of each purported class defined in the Third
12 Amended Complaint, are not entitled to recover any civil penalties and/or fines pursuant to
13 Plaintiffs' causes of action, because, under the circumstances of this case, any such recovery
14 would be unjust, arbitrary and oppressive, or confiscatory.

15 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

16 **Proper Calculations and Documentation**

17 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
18 members of each purported class as set forth in the Third Amended Complaint, or some of them,
19 are barred in whole or in part because at all relevant times at issue, US Airways properly tracked
20 the hours worked by Fleet Service Agents, compensated them for hours worked at the appropriate
21 rates pursuant to California law, and documented such compensation in legally sufficient wage
22 statements.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 **Adequate Remedy at Law**

25 Injunctive relief in this matter is inappropriate because Plaintiffs, and the putative
26 members of each purported class defined in the Third Amended Complaint, or some of them,
27 have an adequate remedy at law and/or other requirements for granting injunctive relief cannot be
28 satisfied.

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **Consent**

3 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
4 members of each purported class as set forth in the Third Amended Complaint, or some of them,
5 are barred to the extent that Plaintiffs and members of the putative class caused, consented to,
6 and/or welcomed the actions complained of to the extent, if any, that they occurred.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 **Unconstitutional Remedy**

9 Any finding of liability pursuant to the California Business & Professions Code §§ 17200
10 *et seq.* or California Labor Code §§ 2698 *et seq.* would violate the Due Process Clauses of the
11 United States and California Constitutions because, inter alia, the standards of liability under the
12 Business & Professions Code are unduly vague and subjective, and permit retroactive, random,
13 arbitrary and capricious punishment that serves no legitimate governmental interest.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 **Deprivation of Due Process**

16 California Labor Code §§ 2698 *et seq.* violates the Due Process Clauses of the United
17 States and California Constitutions to the extent it authorizes actions to be brought on behalf of a
18 class and/or group or "aggrieved employees" without requiring class certification of all persons
19 allegedly injured by the challenged act or practice.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 **Failure to Exhaust Administrative Remedies**

22 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative
23 members of each purported class as set forth in the Third Amended Complaint, or some of them,
24 are barred because Plaintiffs failed to exhaust administrative remedies as required by California
25 Labor Code § 2699.3(a)(1).

26 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

27 **Failure to Exhaust CBA Remedies**

28 Plaintiffs' claims, and each of them, brought on behalf of themselves and the putative

1 members of each purported class as set forth in the Third Amended Complaint, or some of them,
2 are barred because Plaintiffs failed to exhaust administrative and/or alternative remedies as
3 required by the collective bargaining agreement.

4
5 **WHEREFORE**, Defendant US Airways, Inc. prays as follows:

- 6 1. That the Third Amended Complaint and each cause of action therein be dismissed
7 with prejudice;
- 8 2. That Plaintiffs and the putative class take nothing by way of the Third Amended
9 Complaint;
- 10 3. That US Airways be awarded costs of suit and attorney's fees herein; and
- 11 4. That the Court order such other and further relief for US Airways as the Court may
12 deem just and proper.

13
14 Dated: November 27, 2013

O'MELVENY & MYERS LLP
ROBERT A. SIEGEL
ADAM P. KOHSWEENEY

15
16 By: /s/ Adam P. KohSweeney
17 Adam P. KohSweeney
18 Attorneys for Defendant US Airways, Inc.